Court No.2

IN THE HIGH COURT OF UTTARNCHAL AT NAINTAIL

Writ Petition No.859 (MB) of 2001

1. Union of India through its Secretary
   Ministry of Communication, New Delhi,

2. Chief Post Master General, Uttaranchal Circle
   Dehradun.

3. Superintendent Post Offices, Pithoragarh.

..... Petitioners

Versus

1. Central Administrative Tribunal
   Allahabad Bench, sitting at Nainital.

2. Mahinder Singh Sahi
   S/o Sri Bachi Singh Sahi,
   R/o Village Nachni, District Pithoragarh.

..... Respondents.

Learned Assistant Solicitor General for Union of India,
Sri Rajendra Dobhal, learned counsel for the respondent No.2.

Dated: July 11, 2006.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

By means of this writ petition, the petitioners have challenged the judgment and order dated 11.6.2001 passed by the Central Administrative Tribunal, contained in Annexure No.6 to the writ petition.

2. The sole contention of the learned counsel for the petitioners is that the fixation of pay of respondent No.2 in the pay scale of Rs. 2000-3200/-is incorrect and wrong as he was not entitled for the said pay scale on the ground that he was allowed to officiate as Head Post

Master in the said pay scale. The Chief Post Master General, vide his letter dated 24.9.1991 permitted the respondent No.2 (applicant) to draw pay an allowances during the period 27.4.1990 to 11.6.1991 as an employee working in the pay scale of Rs. 1600-3200/- The said order reads as follows:-

> "The P.M.G. has been pleased to order that Sri Mahendra Singh Rahi, A.P.M. Pithoragarh who officiated as Postmaster Pithoragarh (A post borne in Higher Selection Grade-I) during the period from 27.04.1990 to 11.6.1991 shall be allowed to draw pay and allowance as admissible to an employee working in the scale of Rs. 1600-3200/- i.e. in Higher Selection grade II.
>
> Overpayment/Underpayment if any should accordingly be regularized."

3. The Central Administrative Tribunal has held that the applicant (respondent No.2 herein) has held, the post of HSG-I and the pay scale of HSG-I was Rs. 2000-3200/- and, accordingly, it was directed by the Tribunal to fix the pension of the respondent No. 2 on the pay scale of Rs. 2000-3200/-. It is not in dispute that the respondent No. 2 was not regularly promoted on the post of Head Post Master i.e. HSG-I. Therefore, his emolument was to be fixed according to fundamental Rule 22 (I) (a) (1), which reads as under:-

> **F.R.22** (I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-
>
> (a) (1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the

relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on *ad hoc* basis, the Government servant shall have option, to be exercised within one month the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of time -scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an *ad hoc* promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupee twenty-five, whichever is more."

4. Considering this provision of rule 22 (I) a (1) the Superintendent Post Offices granted the pay scale of

Rs.2000-3200/-giving him a notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued. It is also not in dispute that the officiating promotion approving the pay scale in HSG-I by Annexure No.2 the Superintendent Post Offices approved the officiating arrangement on the post of HSG I to be held by the respondent No.2 (applicant) but specifically provided that he shall be paid salary of HSG II. This was the final settlement and the pay scale of HSG-II is Rs. 1600-2660 which was initially approved by the Superintendent Post Offices, vide his letter dated 24.9.1991 and in fact the respondent No.2 was paid the same salary. The order dated 24.9.1991 shows that overpayment/underpayment, if any, should be accordingly regularized. Thus, this order entails recovery of the amount which has been drawn by the respondent No.2 more than due to withdrawn on pay scale of Rs. 1600-2660/-. The Tribunal has rightly, relying on **1995 (1) Supreme Court, Judgment Today, Page 24,** held that the amount drawn by the applicant (respondent No.2) shall not be recovered but the Tribunal fell into error in directing the fixation of pension in the pay scale of Rs. 2000-3200/-. The pension is calculated under the rules known as **Central Civil Services (Pension) Rules** and according to Rule 49 the pension of the respondent No. 2 is to be calculated. Rule 49 (2) (a) of CCS (Pension) Rules provides as under:-

> (2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum

of four thousand and five hundred rupees per mensem."

5. According to this, the pension of the respondent No.2 has to be paid on the average emoluments. Emoluments and Average Emoluments has been defined in **Chapter IV of CCS Pension Rules**. Rule 33 of the said Rules reads as under:-

"**33. Emoluments**

The expression *'emoluments'* means basic pay as defined in Rule 9 (21) (a) (i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death; and will also include non-practicing allowance granted to medical officer in lieu of private practice."

6. The basic pay, as referred under Rule 33, is defined in Rule 9(21) (a) (i) of the Fundamental Rules, which reads as under:-

"(21) (a) "Pay" means the amount drawn monthly by a Government servant as.-

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre."

7. Thus, according to this sub rule (21)(a)(i) of Rule 9 of the Fundamental Rules, the emoluments of the respondent No. 2 have to be calculated on the pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre. Here the competent authority sanctioned the pay scale of

the respondent No. 2 in officiating capacity on the post of HSG I i.e. Rs. 1600-2660/-. Thus, the pension emoluments of the respondents No. 2 have to be calculated on this pay scale. The pay scale of Rs. 2000-3200/- was never sanctioned to the respondent No.2 by any competent authority. Therefore, he is only entitled to draw salary on that pay scale.

8. Thus, we modify the order of Central Administrative Tribunal dated 11.6.2001 and direct that the pension of the respondent No. 2 shall be calculated in the pay scale of Rs. 1600-2660/-. Interest on the amount of arrears of pension shall be paid to respondent No.2 at the rate of 8%(eight per cent) per annum.

9. The petition is allowed accordingly. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**
11.7.2006 **11.7.2006**

P.Singh